

### **REMARKS/ARGUMENTS**

In view of the foregoing amendments and following remarks, favorable reconsideration of the claims is respectfully requested.

Claims 1, 6 – 14, and 20 – 27 are currently pending. Claims 2 – 5 and 15 – 19 have been cancelled. New Claim 28 has been added.

Claim 1 has been amended to recite that the top portion extends along a length of the body portion (See FIG. 1); that the two ends are disposed on opposite ends of the arcuate top (See FIG. 1, reference numbers 16, 18). Claim 1 has also been amended to recite that the bottom has a rectangular shaped flat portion and the undulating profile is on each side of the flat portion. (See FIGS. 1 and 2) Claim 1 has further been amended to recite that the flat bottom and the trough formed from the undulating profile extend between the opposite ends of the body portion. (See FIG. 1). Support for these amendments can be found, for example, in the structure depicted in FIGS. 1 and 2, and in paragraphs [0023] – [0024]. New Claim 28 is directed to an embodiment in which the open mouth has a cross-section that is substantially equal to that of said tubular body portion. (See paragraph [0023]).

Claims 1, 6 – 14, and 20 – 27 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action asserts that the phrase “flat bottom having an undulation profile” is unclear. As noted above, Claim has been amended to recite that the undulating profile is on sides of the flat portion of the bottom. Accordingly, it is respectfully submitted that the rejections under 35 U.S.C. § 112, second paragraph, have been overcome.

Claims 1, 7 – 9, 11 – 12, and 26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,112,925 to Nahill et al. A review of Nahill reviews that the Nahill describes a bottle having a circular cross-section. By definition, a circle is a closed plane curve every point of which is equidistant from a fixed point within the curve. The Office Action asserts that the portion of the container in FIG. 6 between reference numbers 61 includes a flat bottom. However, this cannot be the case because the portion of the container relied on by the Office Action is part of the circumference of a circle, and therefore is an arc. This can further be seen in FIG. 6A, which shows that the asserted flat bottom is actually an arc. As such, it cannot

be considered flat. As noted by the Office Action on page 2, "the definition of flat is completely horizontal." Accordingly, Nahill does not disclose or suggest a container having a flat bottom, and therefore the claims are not anticipated by Nahill.

Further, Claim 1 has been amended to recite that the flat bottom and the trough extend between the opposite ends of the container. In contrast, the structure in Nahill relied on by the Office Action only extends along a portion of the side of the bottle, and does not extend between the top end 45 and bottom end 52 of the bottle. For this additional reason, it is respectfully submitted that claimed invention is not anticipated by Nahill.

Claims 1, 6, 12 – 14, 20 – 25, and 27 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Design Patent No. 375873 to Ahern et al. and U.S. Patent No. 5,514,392 to Garwood. Claims 10, 11, and 22 – 24 have been rejected under 35 U.S.C. § 103(a) as being obvious over Ahern, Garwood, and U.S. Patent No. 4,112,124 to Jarvis.

Ahern is generally directed to a container for containing juice having a generally oval shaped cross section when view from above (see e.g., FIG. 3). In making the rejection, the Office Action has interpreted the container of Ahern as being disposed on its side so that top of the container allegedly corresponds to the open end of the claimed invention, and the bottom of the container allegedly corresponds to the closed end of the container.

The Office Action asserts that the side of the container includes flat bottom having an undulating profile. In support of this assertion, the Office Action points to the side of the container depicted in FIG. 3. However, the structure relied on by the Office Action cannot be considered a flat bottom. As can be seen in FIGS. 3 and 4, the side of the container is clearly curved and has a concave cross-section. As noted above, this cannot be considered a flat structure. Accordingly, Ahern does not disclose or suggest a container having a flat bottom. Garwood has been cited for teaching a container formed of a thermoplastic material and being at least partially transparent. Garwood provides no teachings that cure the deficiencies of Ahern. Accordingly, the claimed invention is not disclosed or suggested by the combination of Ahern and Garwood.

Further, the combination of Ahern and Garwood fails to disclose a structure having a flat bottom and trough that extend between the opposite ends of the container as recited in amended

Claim 1. In contrast, the allegedly undulating profile relied on by the Office Action only extends partially from the bottom end to the top end of the container. (See FIG. 1). Therefore, it can clearly be seen that Ahern includes no corresponding structure that can reasonably be interpreted to have a flat bottom and trough that extend between opposite ends of the container. For this additional reason, it is respectfully submitted that claimed invention is not disclosed or suggested by Ahern, whether considered individually or in combination with Garwood. Jarvis has been cited by the Office Action for teaching the presence of an indicia and that the food product only partially fills the container. Jarvis provides no additional teachings that cure the deficiencies of Ahern and Garwood.

New Claim 28 provides further features and distinctions over the cited references. In particular, the cited references do not disclose or suggest a container having an open mouth with a cross-section that is substantially equal to that of the tubular body portion.

In view of the foregoing amendments and remarks, it is respectfully submitted that the rejections under 35 U.S.C. § 1029b), 103(a), and 112 have been overcome, and that the claims are in condition for immediate allowance.

### **CONCLUSIONS**

In view of the remarks presented above, Applicant submits that all of the pending claims are allowable and the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

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therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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